CITY OF MORGAN HILL

COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING **JUNE 14, 2011**

PRESENT: Mueller, Moniz, Tanda, Koepp-Baker, Benich, Dommer, McKay

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Linder, Senior Planner (SP) Tolentino, Assistant City Manager (ACM) Little, Deputy City Attorney (DCA) Billingsley, Senior Project Manager (SPM) Ordonez

Chair Mueller called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Planning Manager Rowe certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

ORDERS OF THE DAY

1) PC CHAIR/ VICE-CHAIR SELECTION

Select members to serve as Chair and Vice-Chair for a one-year term in accordance with City Council adopted policy.

COMMISSIONERS KOEPP-BAKER AND TANDA MOTIONEDTO SELECT JOHN MONIZ AS CHAIR AND ROBERT BENICH AS VICE-CHAIR.

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

CONTINUED PUBLIC HEARINGS:

2) ZA-11-08: REVISIONS TO THE HOME OCCUPATION ORDINANCE:

A proposed amendment to Section 18.48.055 (Home Occupations) of Chapter 18.48. (Performance Standards) of the Morgan Hill Municipal Code to comply with state regulations regarding massage practitioners and establishments and further changes to the home occupation ordinance to ensure that home occupations do not change the character of residential neighborhoods.

Billingsley presented his staff report.

COMMISSIONERS MUELLER AND BENICH MOTIONED TO APPROVE THE HOME OCCUPATION ORDINANCE

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

3) DAA-05-10E: BARRETT-SYNCON:

A request for approval to amend the development agreement for the Lone Oak project to allow an extension of time to commence construction on 29-units. The 52-unit single-family residential project is located on the Northwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district (APN 817-59-060 & 817-57-001).

Rowe presented his staff report and requested that the item be tabled.

COMMISSIONERS MUELLER AND TANDA MOTIONED TO TABLE AGENDA ITEM 3.

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: ABSENT: NONE.

PUBLIC HEARINGS:

4) ZAA-04-11A: COCHRANE-TBI:

The applicant is requesting approval to amend the zoning for the Madrone Village Shopping Center to include commercial recreational uses of 3,000 sf or less in area, medical offices, and dental offices as permitted uses. The Madrone Village Shopping Center is located at the northwest corner of Cochrane Road and Madrone Parkway in a PD, Planned Development zoning district (APNs 726-33-029 thru -031).

Rowe presented his staff report.

COMMISSIONERS MUELLER AND DOMMER MOTIONED TO APPROVE THE ZONING AMENDMENT

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

OTHER BUSINESS:

5) BMR REDUCTION PROGRAM:

Review the RDCS Subcommittee recommendation and homebuilders' request for expansion of the 2008 Below Market Rate (BMR) Reduction Program.

Ordonez presented his staff report.

Moniz called for a break at 8:05 and reconvened at 8:15.

McKay: How many developers did not originally apply for the BMR reduction program that would be affected by this?

Ordonez: Some projects had allotments in place before the market changed and so they needed adjustments. Others came into it after the drop in the market and knew what was going on with the economy. So they knew about the risk and accepted the allotments anyway. The question is, should the city contemplate having to underwrite that risk, because that's essentially what we're doing?

Dommer: It seems that these developments are driven by the economy and can't go forward because they can't get funding or can't sell the units. So how can you claim there won't be more extensions? It seems that might be premature.

Ordonez: Some of these projects are building and don't have to get outside financing.

Tanda: According to the Housing Market and Current Market Trends chart, it shows that our allocations for homes are 1312, which means we will exceed our RHNA number by around 300. But we will be below the recommended amount in certain categories. What are the consequences of going forward with this?

Ordonez: It causes greater scrutiny in the next housing cycle.

Rowe: Even though we show a surplus, growth control is generally looked at as an impediment to the production of housing, especially to the development of affordable housing.

Tanda: So if we aren't able to meet our targets, we would be further scrutinized over our growth control program?

Ordonez: Yes, in the case of Pleasanton their growth control program was overturned.

Koepp-Baker: Are we depending upon large developers that have their own financing to come in and buy out projects in order to get them developed?

Ordonez: The overall goal is to get these projects built. How builders obtain financing is up to them.

Benich: Going back to that chart called Current Market Trends, do senior units count towards the low or very low categories?

Ordonez: They can. Senior housing has been identified as a special needs type. However, one senior project that has allocations is at regular market rate. It depends on the product type that they submit for.

Benich: The changing demographics of our society are probably going to require more senior housing.

Ordonez: This doesn't include the possibility for acquisition rehab, which could potentially provide more low income housing.

Moniz opened the floor to public comment.

Rocke Garcia of Glenrock Builders appeared: My wife and I have been building in the City of Morgan Hill for many years, so we are very familiar with RDCS. On the Project Sales Activity chart, all of the examples shown are projects being built by very large builders. Those developers who have been working in the city for a long time are smaller and are not able to get the financing. Points I want to make are: 1) No large project has ever won the RDCS competition without committing to BMRs, so it's really not voluntary. 2) We need to have a workshop to discuss different options for getting BMRs built.

John Telfer appeared: I represent various developers. I appreciate the report that has been prepared tonight. I do take exception to some items. Though it has been stated that some people applied after the drop in the market and should have known better, the market continued to drop. This is unlike any previous recession. No one could have predicted what would happen. There are benefits to a community when houses are built, including permit fees, taxes and new jobs created. What if we make no changes to the existing policy? There will be at least 100 homes that won't get built. There is a definite cause and effect between the number of houses built before and after the BMR reduction program. In 2009 there were only 24 housing starts. Last year there were 157. So there is a direct correlation and a need to extend the BMR policy. One suggested change to staff's recommendation to help it meet the satisfaction of the development community would be to extend the program to include the 2008 RDCS competition projects with 2010/11 allocations.

Benich: You said that San Jose's building increased after their BMR program was lifted, but then it went back down. What happened to cause that?

Telfer: I believe it was because the units were absorbed.

Moniz: So you're saying you're comfortable with staff's recommendation, with the exception that you'd like to see the 2008 RDCS competition projects be included in the BMR waiver/reduction program?

Telfer: Yes, except I would like clarification regarding exempting small projects. Small projects typically don't build BMRs; instead, they commit to double in-lieu fees. If they are exempted, and only have to pay a $75,000 fee, that doesn't seem to be the same rules that everyone else has to play by.

Mueller: You're not saying that we have to go beyond the 2010/11 allocations?

Telfer: No, I'm saying that we include the 2010/11 allocations as part of the group eligible for the BMR reduction program.

Ordonez: What I understand Mr. Telfer to be referring to is that the original projects included in this reduction/waiver stopped at 2009/10. They would like to have that expanded to include FY 2010/11. They're asking you to move it out by one year.

Koepp-Baker: These allocations would have been applied for in 2008?

Telfer: Correct.

Mueller: So the allocations after FY 2010/11 would pay the in-lieu fee?

Telfer: Yes, although if it's required to be paid with the issuance of the first permit, that might undo some of the benefits we're trying to achieve here.

Ordonez: For clarification, the fees used to be collected at permit issuance, and then Council moved it to occupancy. But they would be collected per each phase of the development.

Mueller: How many houses do you think permits are going to be issued for during the next year?

Telfer: With the adoption of this measure, well over 100.

Mueller: I think that we might not need to go out that far, depending on the recovery.

Telfer: To me this recession is all about unemployment and it's not going to recover until the unemployment improves. I think it is still going to take at least two to three years to come out of this.

Mueller: I would rather re-visit this in the future than be too generous now.

Tanda: What exactly would you like to see changed?

Telfer: Page 4 of the RDCS Subcommittee Recommendation includes projects up through FY 2009/10. This would now extend it by one more year to include FY 2010/11.

Ordonez: This extension would add another 12 projects approximately to the original 13.

Tanda: If, in lieu of building BMRs, there is a contribution of a $75,000 fee, where does that money go and how many BMRs would it build?

Ordonez: It would go towards acquisition of rehab projects, land banking, gap financing. It would be intended to make up for the gaps that are being created in the BMR housing market right now.

Tanda: Would $75,000 actually build a BMR?

Ordonez: The problem right now is that the rate for very low and low market rentals is almost the same as market rate.

Little: Our average subsidy per unit for the low and very low income categories has been between $250,000 and $300,000 per unit over the last three to four years. When you compete and you produce units using things like tax credits or the state's MHP financing program, you have additional requirements that may include a community room, site based services for the rents, etc. Those increase the cost. So the actual cost of providing those units is much higher, which is why we believe most of the product is going to be produced through a partnership of non-profits, the redevelopment agency or some other funding mechanism that the state may create in the future. Additionally, there are a number of other provisions of the staff recommendation that include no future ELBAs. So I'm not sure that the projects that would be part of the FY 2010/11 addition would have issues with any of these other recommendations.

Telfer: My understanding is that the projects from that particular phase would not be eligible for ELBAs.

Ordonez: That was the intent. It was only for the years that were impacted.

Mueller: So the only ELBA loss is for a phase that takes the BMR reduction?

Telfer: That is my understanding.

Mueller: On the original program, those projects that did not have Build It Green criteria, were asked to provide something that would be a benefit to the community, instead of building homes that met 132 points.

Telfer: I'm not sure that the 2010/11 allocation years were at 132 points.

Mueller: I think that was the first year for Build It Green.

Telfer: I think it was the following year.

Mueller: We need to find out because you would be asking to join a group of homeowners where they had to make a commitment to get into the program, and you're asking for no commitment.

Telfer: I'm trying to get housing starts.

Mueller: I'm trying to keep a level playing field.

Telfer: But most of these projects are multi-year allocated and they have allocations in the 2009/10 as well. As an example, Jasper Park didn't re-compete, so their original commitments would stay in place.

Mueller: But that would not be true of all projects, so we need to find out.

Ray Panek, Senior Vice-president for KB Homes appeared. Even as a large company, there is a huge amount of risk associated with development. We have recently purchased the Sherimar Ranch project, which was an assemblage of parcels. One of the reasons it was economically feasible was because of the exclusion of the BMR product. It was a significant incentive. We do have a contract with the land sellers that would allow us to opt out if the market and the project don't perform as anticipated. We really want to build out the entire project. We feel that it is very important to extend this program. We also recently purchased Milano. It is a project that is probably more affordable by design in the sense that it provides three different kinds of housing. The townhomes probably hold the most market risk.

Moniz: Your townhomes at Milano are three and four bedroom?

Panek: Yes.

Moniz: And you anticipate median to moderate price levels of $335K to $440K?

Panek: Yes.

Mueller: To clarify, in the median and moderate price ranges we're actually going to overbuild. It's the low that we're going to be deficient in.

Vince Fletcher with DR Horton appeared. We came to Morgan Hill because it is a quality place to live. Home building is a partnership between the builder and the city. Home building puts more people to work than any other business in California. We're trying to build houses and it's not easy. We're all caught in this terrible recession. Some of us have an advantage because we don't have to go to banks to get a loan. But that is not what builds the homes. We need help. I'm not sure if these measures even go far enough. I don't see that the recession is over. I think things are going to get worse. I would like to see these recommendations get approved.

Mueller: Since you're one of the more active builders in the community, how do you see things going during the next couple of years?

Fletcher: I think they're going to get worse with not many homes being built. I believe the market is deteriorating. I don't think you're going to get anywhere near building the number of units that have been allocated. I think we're going to be back here year after year asking for the same exemptions. It depends on whether you want houses built or not.

Moniz closed the public comment.

Discussion:

Moniz: Is this time sensitive? Is it critical that we make this decision tonight?

Little: It is because we have several builders who are getting ready to submit pre-app's and they need to know whether or not to make a decision based on this. You have a decision from the subcommittee next week. We'd like to have all these decisions rolled into one so that people know how to plan, especially for multi-phase projects. It is our hope to get this to the next City Council meeting, which is June 22. It needs to be in the agenda within the next two days.

Benich: I think we have a reasonable recommendation. The bottom line is I think we need to help the builders get going. I would be inclined to accept Mr. Telfer's recommendation for an additional year.

Koepp-Baker: I agree, both with Mr. Telfer's request for an additional year and the subcommittee's recommendations.

Mueller: I'm afraid that we're going too far. This takes us out through 2012/13. This is effectively one BMR for 20 units instead of one BMR for ten. So we're cutting it in half.

Ordonez: All the builders are really asking is that you extend out through 2010/11, not through 2012/13.

Mueller: But bullet two really takes it all the way out through 2012/13. I think the resolution needs to have some language that would state no more extensions of the BMR program and no more ELBAs and make it clear what phase of the project is taking part in the program. We also need to clarify when the fee is due.

Ordonez: It would only cover the phases through FY 2010/11, so it would only be the units in 2011 and prior that you'd be collecting fees for.

Mueller: So then you're collecting fees on units that might not ever be built. You're saying that they would have to pay fees on units through 2012/13 on the occupancy of one unit. So they're paying thousands of dollars on units that there's no chance they're going to be building in the next three years.

Ordonez: This is after they've pulled the permit on a unit, and it's the occupancy of that unit.

Mueller: Are you collecting it by phase or for all phases?

Ordonez: The original intent was to collect the fee up front so that they had the money available to build or make up units that were being lost in the program.

Rowe: If we're not issuing a permit, they're not paying a fee.

Mueller: Is it paid phase by phase? It's not for all phases at one time?

Ordonez: Phase by phase.

Tanda: It seems like the more allocations we have that are exempted, the larger our deficit becomes.

Ordonez: We have done some quick calculations. For the additional units that are being requested for the 2010/11 allocations, that would be a loss of 57 total BMRs. 27 of those would be low and 30 would be median.

Tanda: When you say loss do you mean you wouldn't have the funds to create those?

Ordonez: No, it means that's what is being waived.

Tanda: So those units would be waived, but at the same time you'd be collecting fees of about 25 cents on the dollar.

Ordonez: In the presentation what we're trying to show is that developers do not have to provide ownership units. The way that the staff would propose to make up those units would predominantly be in rental units. For most of the rental units, the total amount to produce it is very high. However, with the potential to partner with other funding sources, we think we could use the $75,000 to leverage those other funding sources to compensate and make up those units.

Tanda: So the net result is that we would have less very low income units that are owner occupied but we would have more rentals.

Ordonez: Yes.

Tanda: For me, that is not unreasonable. And that applies even if we were to include allocations from 2010/11.

Ordonez: We did a rough calculation. It was about 57 units that were involved in this expansion. Of that, 27 would be low. 30 would be median. The original program consists of 50 units: 27 low, 23 median. If we included all the projects that would be eligible, it would be 130 BMR units. What Mr. Telfer is asking for are 57 units. When added to the 50 that are already in the program, that is 107 units total. You are just basically expanding the program through one additional year.

Benich: And the city would collect in lieu fees for each of those?

Ordonez: Only if they were extended out and they took advantage of the $75,000 fee.

Mueller: The problem is that those are based on building out all the allocations in those years and that's not going to happen.

Tanda: Should those numbers be added to the market trend, or are they reflected in it?

Ordonez: We did not include those at all. The only thing we included in the market trend was the assumption in terms of the price drop and what impact it would have in terms of the low income numbers.

Tanda: If we were to support an expansion of the program, it would not exacerbate the projection of the deficit that we currently are showing in extremely low income?

Ordonez: It would not impact the 137 extremely low or the six units in very low. Council's policy right now for ownership housing is for low and moderate income. With the market changes, we anticipate that we're going to be able to meet the moderate income numbers. So what's really in play are the low income numbers and we feel that you can make those up as rental units.

Dommer: We know that we're in a bad recession, which greatly affects housing. But where developers, engineers, architects, etc. are concerned, we're actually in a depression. We need to understand how the economy affects the developer. We need to be flexible. I would support the resolution.

McKay: I agree with Commissioner Benich. I think flexibility is key. We really don't have the ability to control this recession. So is there a mechanism that if this sunsets we can resurrect it?

Ordonez: It was created out of Council policy so they would have the ability to resurrect it, if they felt it was worthwhile.

Moniz: My opinion is that we need to incentivize construction without giving away the farm.

Mueller: The existing program goes through September 30, 2011. If we adopt this program does it change anything because right now if they start a new phase, once this is adopted, they would have to pay $75,000 for each BMR in that phase—even though there is an existing program in place?

Ordonez: What you're doing is extending the existing program by one year to September 30, 2012, and then for the phases beyond that, up to 2014, they would be able to buy out those last couple of phases by paying the 50 percent housing fee.

Mueller: In the first bullet it says you have to pay a 50 percent housing fee.

Ordonez: What it says is 100 percent BMR deadline extension for the original projects to Sept. 30, 2012 and the ability to opt out of the BMR obligation until June 30, 2014, by paying a 50 percent housing fee of $75,000 per unit. If a developer were covered by the existing program or the expansion that is being proposed by the builders, their first choice would be to try to build the units by September 30, 2012. However, if they start getting close to that date, they then would have the option to buy out the BMR commitments until June 30, 2014 by paying the fee.

Mueller: We need to add something clarifying that it is for each phase of the project that this applies, not for all potential phases.

Rowe: You can insert the language "for each phase" into the resolution. Also, in bullet 3 it says that unused allocations shall be lost if not constructed by the date. Do you want it to read "if construction is not commenced by June 30th?" Typically, June 30 is the commence construction date.

Mueller: We should apply the same principles we already use, so it should be commencement of construction.

Tanda: Can we clarify what we've just talked about?

Rowe: So the first paragraph would insert "plus expanding the program to include the 2008 RDCS competition with FY 2010/11 allocations" after "original program."

Mueller: The third bullet should be worded something like "the unused allocations of the phase would be lost if the units have not met the requirements for framing up through roof sheathing by June 30, 2014.

Tanda: So you're saying if they haven't met this requirement they lose the allotment? That's pretty draconian.

Rowe: These are units that the developer has not been able to pull a permit on, so in order to be able to preserve that allocation they'd need another ELBA. But this is saying no more ELBAs for any portion of the phase that you haven't used by 2014.

Ordonez: The thought was that if you stopped building and didn't use the allocations by 2014, they would have probably already been extended four years already, so those units should go back into the pot. Keeping track of all these deadlines by staff was problematic. We were trying to streamline it for both developers and staff.

Mueller: I'm trying to make sure we say that they're going to lose an allocation if they don't get it built.

Rowe: The problem is that once they get a permit and they have completed the footings and forms for the foundation, or stubbed water and sewer laterals, they have a vested right in the property and they can obtain permit extensions from the Building Official. At that point they're "used allocations." We're saying that if they haven't established a vested right by June 30th, those allocations would expire June 30, 2014.

Mueller: So we need to change that verbiage from "are not constructed" to "have not commenced construction" in bullet 3.

Rowe: I am comfortable using the definition of commencement as defined in our policy. It is a long standing policy. We shouldn't be trying to go beyond that with verbiage about framing. Once they have commenced, they are "used allocations."

Mueller: But it should state "if units are not constructed *for that phase* by June 30, 2014." For the phase also needs to be added to the 4th bullet.

Rowe: So it should state, "All housing fees to buy out the BMR obligation for each phase of the project are due at occupancy of the first unit."

Mueller: Bullets 3 and 4 under paragraph 2 need the same modifications.

Tanda: Does paragraph 2, when it states "all projects" include small projects?

Ordonez: For small projects, the city does have an adopted fee schedule that is graduated. For some of the smaller projects, it may not be as high as $75,000. So what you're doing is committing them to a higher fee potentially. It might be better to say "50 percent of the existing housing fee" and delete the $75,000 per unit.

Benich: Are we going to do one big resolution or one for each project?

Rowe: The City Council adoption will be a single authorizing resolution.

COMMISSIONERS MUELLER AND TANDA MOTIONED TO APPROVE THE MODIFIED RESOLUTION TO INCLUDE THE 2010/11 ALLOCATION YEAR, TO CLARIFY THAT THE PROGRAM APPLIES PER PHASE, AND TO STRIKE $75,000 PER UNIT FROM PARAGRAPH 2.

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

6) REGIONAL HOUSING NEEDS ALLOTMENT ANNUAL PROGRESS REPORT:

Review the City's housing production relative to the Regional Housing Needs Allocation (RHNA) established by the Association of Bay Area Governments for the current Housing Element period of 2007-2014.

Ordonez presented his staff report.

Mueller: I think the assumption that 950 units will be built is highly optimistic, so unless this has to go to City Council right away, I'd like to spend more time working on it.

Ordonez: This is an annual report. It shows what we've done. It's meant to be more of a progress report, rather than a projection.

Mueller: But we need to be more realistic when we report to City Council.

Benich: Maybe you could also include a line under units planned/allocated, how many you think will really be built.

COMMISSIONERS TANDA AND MUELLER MOTIONED TO ACCEPT THE REPORT WITH A MODIFICATION SHOWING HOW MANY UNITS ARE PROJECTED TO BE BUILT

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

7)PC HOLIDAY SCHEDULE:

Discuss/Commission discretion and approval of Summer Meeting Schedule.

The commissioners agreed to cancel the second meeting in August and the second meeting in July, if possible.

ANNOUNCEMENTS / COMMISSIONER IDENTIFIED ISSUES

Commissioner Mueller announced that there is a High Speed Rail community outreach meeting on Thursday June 16 from 6 to 8 pm in the Hiram Morgan Hill Room at the Community Center.

CITY COUNCIL REPORTS

The Council voted to rescind the allocations for the E. Dunne-Mendoza project. No other projects have been determined to be eligible for those allotments so they will be recycled back into the pot.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Mueller adjourned the meeting at 10:45 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician

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